87-244

No.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

HUGH M. MATCHETT,

Petitioner,

vs.

RUTH A. WOLD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1.

Whether in a diversity action where the plaintiff seeks to attach a cause of action of the defendant against a use defendant for the purpose of securing satisfaction of his ultimate judgment against her, diversity of citizenship between the plaintiff or the defendant on the one hand and the use defendant on the other is essential to the jurisdiction of the district court?

2.

Whether on an appeal from a judgment dismissing an action for want of diversity jurisdiction a court of appeals has authority to remand the suit without reversing the judgment, for further exploration of the plaintiff's claims against the use defendants to ascertain whether they are properly describable as purely ancillary

claims?

3.

Whether a court of appeals could properly report in a published opinion that it is forwarding a defendant's brief which makes serious allegations of misconduct against the plaintiff when he was her lawyer to the state attorney's disciplinary commission to consider the allegations in a situation in which no judge has or could certify that to the best of his knowledge, information, and belief formed after reasonable inquiry, that any allegation against him is true, in violation of a state rule that all investigations by that commission are to be private and confidenitial unless otherwise ordered by the supreme court of the state or a member of that court?

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1 Moore's Federal Practice, 2nd Ed. 1966 § 0.90[3], page 828.1 8

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PETITION FOR A WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

HUGH M. MATCHETT, Petitioner, Pro Se, petitions the Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review a judgment of that court entered May 4th,

1987, remanding the case without reversing the judgment appealed from dismissing the action for a purported want of diversity jurisdiction, for a further exploration of the nature of his claims against the use defendants, and whether they are properly describable as purely ancillary claims, and stating that the defendant had made serious allegations of misconduct on the part of the plaintiff when he was her lawyer in her brief, and it was forwarding it to the state attorney disciplinary commission to consider the allegations, although needless to say, it expressed no view on their actual or probable truth or falsity.

This petition is due to be filed on or before July 3rd, 1987.

OPINION BELOW

The opinion of the United States Court of Appeals has not been published yet as far as petitioner knows.

The opinion appears in Appendix "A".

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U.S. Code, § 1254(1).

STATEMENT OF THE CASE

This suit was dismissed for want of complete diversity of citizenship, and the plaintiff appealed. A citizen of Illinois, he sued his Wold, a Wisconsin citizen, in a federal court in Illinois, seeking to recover fees for legal work that he has performed for her in several lawsuits, and basing federal jurisdiction on diversity. 28 U.S.C. § 1332. He filed an amended complaint which named as additional defendants for his use all the defendants in the suits

that he had brought on Mrs. Wold's behalf when he was her lawyer. All but one of the use defendants are citizens of Illinois. Holding that the joinder of these use defendants had destroyed the complete diversity on which the federal court's jurisdiction depends, the district judge dismissed the complaint on his own initiative.

The court of appeals disregarded the title of the complaint, which is:

> COMPLAINT AGAINST CLIENT FOR REASONABLE ATTORNEY'S FEES AND EXPENSES AND TO ATTACH HER CAUSE OF ACTION AND PROSPECTIVE JUDGMENT IN CURRENT LITIGATION TO SATISFY HIS OWN CAUSE OF ACTION AND PROSPECTIVE JUDGMENT AGAINST HER UNDER RULE 64 OF THE FEDERAL RULES OF CIVIL Procedure.

The complaint was amended by a pleading entitled:

> FIRST AMENDMENT TO THE COMPLAINT AGAINST CLIENT FOR REASONABLE ATTORNEY'S FEES

AND EXPENSES AND TO ATTACH HER CAUSE OF ACTION AND PROSPECTIVE JUDGMENT IN CURRENT LITIGATION TO SATISFY HIS OWN CAUSE OF ACTION AND PROSPECTIVE JUDGMENT AGAINST HER UNDER RULE 64 OF THE FEDERAL RULES OF CIVIL PROCEDURE WITH THE ORIGINAL HEADING BUT ADDING ADDITIONAL NAMES TO RUTH A. WOLD'S ACTIONS AND CAUSES OF ACTION AS PLAINTIFF FOR HIS USE AGAINST THEM AS DEFENDANTS FOR HIS USE.

The Amendment set out Chapter 13, § 14, Illinois Revised Statutes 1983; that he had been discharged solely because he had sued her by letter dated August 17th, 1984, and that the discharge was without cause; that he had spent at least 3500 hours of chargeable time representing her in litigation in which he was her attorney of record, and he has acted as her general counsel in regard to all her litigation arising out of her litigation with her husband and her son-in-law and their cor-

poration, and that she had various suits on file in the district court, and had other suits she could file for damages, and that he had a right to attach each cause of action she might have against each of the individuals named and the named corporation for satisfaction of his own cause of action and prospective judgment against her, and that he had an attorney's statutory charging lien for his fees on her cause of action, if any, and her prospective judgment, if any, against Bull Valley Management Company, and Orin W. Wold and George R. Wold, and an equitable lien on said causes of action and prospective judgments, for money advanced by him to Mrs. Wold.

Plaintiff concluded:

> "When plaintiff filed this suit to the day Ruth A. Wold filed her countercomplaint against him, he could made that certificate /required by Rule 11 of the Federal Rules of Civil Proce-

dure/. But once she filed that counter-com-complaint and her amended counterclaim denying their agreement for a reasonable fee and asserted that he had agreed to represent her on a contingent fee basis, which is absolutely false, and that he had agreed to pay all the costs and expenses without reimbursement unless she wins her litigation, which is absolutely false, he cannot make that statement in regard to her claims and causes of action against others based on her testimony. All counsel can say is, assuming she has told him the truth, he has read this pleading and to the best of his knowledge, information, and belief, there is good ground to support it."

He prayed judgment for the full amount of judgment previously requested, and all therelief previously requested, and any futher relief which in equity and good conscience he may be entitled, including the attachment of his former client's claims and causes of action against others specified, and the enforcement of his various liens.

REASONS FOR GRANTING THE WRIT

It is fundamental that an attachment or garnishment or other remedy providing for seizure of property for the purpose of securing satisfaction of the judgment ultimately to be entered in the cause is an ancillary proceeding in a federal court, and when a federal court has jurisdiction over the main cause of action, it also has jurisdiction over any proceeding ancillary to the action regardless of money involved, the citizenship of the parties, or the existence of a federal question in the ancillary suit. See Rule 64 of the Federal Rules of Civil Procedure and Bacon v. Rives, 18-82, 166 US 99, 104, and Local Loan Co. v. Hunt, 1933, 292 US 234, 239, and 1 Moore's Federal Practice, 2nd Ed. 1986 § 0.90[3], page 828.1.

But the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this court's power of supervision by holding that it has authority to remand without reversing the judgment appealed from for further exploration of the nature of petitioner's claims against the defendants for his use, whether it is properly describable as a purely ancillary claim, all because it believes "that it is very unlikely that Matchett has a statutory attorney's lien" and "extremely unlikely that Matchett has perfected his lien" and "If as may well be the case Matchett has no basis whatever for claiming to have an unsatisfied lien against the additional defendants, the inference arises that he has other purposes in suing", which is pure conjecture, and

overlooks the fact that unless and until the judgment of dismissal for want of jurisdiction is reversed, the district court has no jurisdiction to proceed.

Furthermore, it has overlooked the fact that the district court had no right to dismiss a diversity suit for fees and expenses against Ruth A. Wold because it might not have jurisdiction over anybody else.

The Court of Appeals has so far also departed from the accepted and usual course of judicial proceedings as to call for the exercise of this court's power of supervision because of its conduct in reporting in a published opinion that it is forwarding a defendant's brief which makes serious allegations of misconduct against the plaintiff when he was her lawyer to the state's

attorney's disciplinary commission to consider the allegations in a situation in which no judge has or could certify that to the best of his knowledge, information, and belief formed after reasonable inquiry, that any allegation against him is true, in violation of a state rule that all investigations by that commission are to be privileged and confidential unless otherwise ordered by the supreme court of the state or a member of that court, making a pubished memorial that the client has charged her former attorney with misconduct and the court had referred the matter to the commission. That is his reward for fifty years of service at the bar. Rule 766 of the Rules of the Supreme Court of Illinois expressly provides: "Investigations conducted by the Administrator, proceedings before the inquiry, hearing and review

boards, and proceedings pursuant to Rules 753(e)(6) and 760 shall be private and confidential" subject to certain exceptions not deemed applicable here.

CONCLUSION

This petition for a writ of certiorari should be granted to review the judgment of the United States Court of Appeals for the Seventh Circuit in this cause.

Respectfully submitted,

Hugh M. Matchett

HUGH M. MATCHETT

APPENDIX "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 86-1345

HUGH M. MATCHETT,

Plaintiff-Appellant,

v.

RUTH A. WOLD,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 84 C 7078—**James F. Holderman**, *Judge.*

SUBMITTED MARCH 20, 1987—DECIDED MAY 4, 1987

Before BAUER, *Chief Judge*, and POSNER and EASTERBROOK, *Circuit Judges.*

POSNER, *Circuit Judge.* This suit was dismissed for want of complete diversity of citizenship (citizens of the same state must not appear on both sides of the lawsuit, *Fidelity & Deposit Co. v. City of Sheboygan Falls*, 713 F.2d 1261, 1264 (7th Cir. 1983)), and the plaintiff, Matchett, has appealed. A citizen of Illinois, he sued his former client, Wold, a Wisconsin citizen, in a federal district court in Illinois, seeking to recover fees for legal work that he had allegedly performed for her in several lawsuits, and basing federal jurisdiction on diversity. 28 U.S.C. § 1332.

He filed an amended complaint which named as additional defendants all the defendants in the suits that he had brought on Mrs. Wold's behalf when he was her lawyer. Some of these defendants are citizens of Illinois. Holding that the joinder of these defendants had destroyed the complete diversity on which the federal court's jurisdiction depends, the district judge dismissed the complaint on his own initiative.

We commend the judge for his vigilance in policing the limits on our jurisdiction, see, e.g., *Kanzelberger v. Kanzelberger*, 782 F.2d 774 (7th Cir. 1986), but we are unable to determine from the record whether the joinder of the additional defendants destroyed the diversity jurisdiction of the district court, and we must therefore remand the case for further proceedings in the district court.

Matchett was proceeding against these defendants under Illinois' attorney's lien statute. See Ill. Rev. Stat. ch. 13, ¶ 14; *Rhoades v. Norfolk & Western Ry.*, 78 Ill. 2d 217, 226-27, 399 N.E.2d 969, 973 (1979); *McKee-Berger-Mansueto, Inc. v. Board of Education*, 691 F.2d 828, 834 (7th Cir. 1982). That statute empowers an attorney to affix a lien for his unpaid legal fees to any verdict or judgment that may be entered on behalf of the person who owes him those fees. He does this by mailing the defendants in that action a registered or certified letter informing them of his claim. Should he later join those defendants as additional parties in a collection suit against his client, this would not necessarily destroy complete diversity. The addition to a lawsuit of a purely nominal party—the holder of the stakes of the dispute between the plaintiff and the original defendant—does not affect diversity jurisdiction. This principle is illustrated by *Bacon v. Rives*, 106 U.S. 99 (1882), where the plaintiff named as additional defendants persons who were in effect garnishees, and the Court held that this didn't affect diversity jurisdiction.

It is true that in an old but still (so far as we are aware) authoritative decision the Illinois Supreme Court distinguished between the Illinois statutory attorney's fee lien and an ordinary lien. See *Baker v. Baker*, 258 Ill. 418, 420-21, 101 N.E. 587, 587-88 (1913). An ordinary lien at-

taches to property in being; the statutory attorney's lien attaches to an expectation, and the court thought the statute better described therefore as making the attorney in effect a partial assignee of his client's interest in the lawsuit in which the attorney was representing him. But we do not see why this should change the case. In either way of looking at it the attorney's interest remains contingent on the outcome of the dispute between his client and his client's adversary.

The difficulty with all this is that it is very unlikely that Matchett has a statutory attorney's lien. There is no indication that he ever served the required notice on the additional defendants. It appears that all he served on them is the complaint, and we find it hard to imagine how he could sue them for failing to honor his lien before they could even know he had a lien! We are also greatly troubled by the fact that Mrs. Wold appears to have fired Matchett before he filed the complaint. The Illinois courts do not allow the statutory lien to be perfected after the attorney-client relationship has terminated. *Rhoades v. Norfolk & Western Ry.*, *supra*, 78 Ill. 2d at 227, 399 N.E.2d at 973-74.

On both grounds it is extremely unlikely that Matchett perfected his lien. He might have an equitable lien, see *McKee-Berger-Mansueto, Inc. v. Board of Education*, *supra*, 691 F.2d at 835-37, but this is unlikely, if only because he doesn't argue that he has an equitable lien. It might seem that, if indeed he has no perfected lien against the defendants, still this is no reason to treat them as other than nominal parties, when that is all they would be if he did have a perfected lien. But there is a difference between a nominal party, and a party against whom the plaintiff has failed to state a claim. If as may well be the case Matchett has no basis whatever for claiming to have an unsatisfied lien against the additional defendants, the inference arises that he has other purposes in suing them; that in fact there is a genuinely adversary relationship. If so, they are real defendants, not nominal defendants in the nature of garnishees or other stakeholders, and the

requirement of complete diversity of citizenship is not satisfied.

In these confused circumstances, it seems best to remand for a further exploration of the nature of Matchett's claim against the other defendants, and whether it is properly describable as a purely ancillary claim to enforce a lien.

On a separate front, Mrs. Wold's brief (filed pro se) makes serious allegations of misconduct on the part of Matchett when he was her lawyer. She claims among other things that he filed a number of suits without her consent and refused to dismiss them when she asked him to. We are forwarding the brief to the Illinois Attorney Registration and Disciplinary Commission to consider the allegations. Needless to say, we express no view on their actual or probable truth or falsity.

REMANDED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

JUDGMENT – WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

May 4, 1987.

Before

Hon. WILLIAM J. BAUER, *Chief Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*

HUGH M. MATCHETT,

Plaintiff-Appellant,

No. 86-1345 vs.

RUTH A. WOLD,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 84-C-7078—**James F. Holderman**, *Judge.*

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REMANDED, with costs, in accordance with the opinion of this Court filed this date.